

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

NELLIE L. KING, THE LAW OFFICES
OF NELLIE L. KING, P.A.,

CASE NO.: 2019CA011150XXXXMB
JUDGE G. JOSEPH CURLEY
CIRCUIT CIVIL DIV.: AA

Plaintiff,

v.

CITY OF DELRAY BEACH, FLORIDA,

Defendant.

MOTION TO DISQUALIFY COUNSEL COLLEEN DUNNE

COMES NOW, the Plaintiff, **NELLIE L. KING, THE LAW OFFICES OF NELLIE L. KING, P.A.**, and pursuant to Fla .R. Prof. C. 4-3.7, and precedential authority, and hereby files this *Motion to Disqualify Counsel Colleen Dunne*. As grounds in support thereof, the Plaintiff states as follows:

BACKGROUND

1. Attorney Colleen Dunne, an Assistant State Attorney for Monroe County, Florida, entered an appearance in these proceedings on September 30, 2019 (*See Exhibit A*). On the date of filing the *Notice of Appearance*, courts were closed, as Palm Beach County Courts were shut down for the Jewish holiday, Rosh Hashanah. The date of filing of the *Notice of Appearance* was also the day before a Case Management Conference was scheduled before this Court, and two days before a substantive hearing was to be held on Plaintiff's *Complaint for Writ of Mandamus and Declaratory Relief*.

2. The matters now at issue have a considerable procedural history involving Nicole Guerriero, Colleen Dunne, the City of Delray Beach, the Delray Beach Police Department, the

Palm Beach County State Attorney's Office, and both the family and criminal court divisions of Palm Beach County Courts.

3. Colleen Dunne is prohibited from representing any interest in this litigation, as she is a witness to these proceedings. Colleen Dunne has an interest in the outcome of the proceedings. Colleen Dunne is under Plaintiff's subpoena to provide testimony in these matters (*See Exhibit B*). The undersigned would note that Colleen Dunne is also employed as an Assistant State Attorney for Monroe County, Florida, (*See Exhibit C*).

4. The Florida Rules of Professional Conduct are to be used in determining whether an attorney should be disqualified. *Young v. Achenbauch*, 136 So. 3d 575 (Fla. 2014).

5. Florida Rule of Professional Conduct 4-3.7 prohibits Ms. Dunne from entering an appearance on behalf of Nicole Guerriero. The Rule provides:

(a) When Lawyer May Testify. A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness on behalf of the client unless:

- (1) the testimony relates to an uncontested issue;
- (2) the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony;
- (3) the testimony relates to the nature and value of legal services rendered in the case; or
- (4) disqualification of the lawyer would work substantial hardship on the client.

6. The basis for limiting Ms. Dunne from serving this dual role as both advocate and witness is that such an effort can prejudice the tribunal and can involve a conflict of interest between the lawyer and the client (*See Comment to Fla .R. Prof. C. 4-3.7*). The dual role may confuse the trier of fact: "The trier of fact may be confused or misled by a lawyer serving as both advocate and witness. The combination of roles may prejudice another party's rights in the litigation. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof." *Id.*

7. Allowing Ms. Dunne to serve this dual role further prejudices the Plaintiff, as the Rule of Sequestration would be unavailable. This would give an unfair advantage to Nicole Guerriero and the Defendant, allowing testimony and issues to be shaped in contravention of the law. *Dumas v. State*, 350 So. 2d 464 (Fla. 1977); *Citing Geders v. U.S.*, 425 U.S. 80, 86, 96 S.Ct. 1330, 47 L.Ed.2d 592 (1976).

WHEREFORE, based on the foregoing, and other grounds to be raised *ore tenus*, the Plaintiff respectfully requests that this Honorable Court disqualify witness Colleen Dunne from participation in these proceedings as an attorney for Nicole Guerriero.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this *Motion to Disqualify Counsel Colleen Dunne* has been furnished via the Florida E-Portal in compliance with Rule 2.516, Florida Rules of Judicial Administration, to: the City of Delray Beach, Florida, at eservice@mydelraybeach.com, Delray Beach City Attorney Lynn Gelin at gelinl@mydelraybeach.com, Delray Beach City Attorney Lawonda Warren at warrenl@mydelraybeach.com, Colleen M. Dunne, Esq. at dundun2124@gmail.com and to Nicole Guerriero at nikoli788@aol.com, on this 1st day of October, 2019.

Respectfully submitted,

Joseph G. Sconzo P.A.
250 S. Central Boulevard, Suite 201
Jupiter, FL 33458
Tele: 561-781-3000
E-Mail: josephgsconzolaw@gmail.com

The Law Offices of Nellie L. King, P.A.
319 Clematis Street, Suite 107
West Palm Beach, FL 33401
Tele: 561-833-1084
E-Mail: Nellie@CriminalDefenseFla.com

BY: /s/ Joseph G. Sconzo
Joseph G. Sconzo
Florida Bar No.: 508720

BY: /s/ Nellie L. King
NELLIE L. KING, ESQUIRE
Florida Bar No.: 0099562

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM
BEACH COUNTY, FLORIDA

NELLIE L. KING, THE LAW OFFICES
OF NELLIE L. KING. P.A.

CASE NO.: 2019CA011150XXXXMB
CIRCUIT CIVIL DIV.: AA

Plaintiff,

v.

CITY OF DELRAY BEACH, FLORIDA,
Defendant.

_____ /

NOTICE OF APPEARANCE AND EMAIL ADDRESS DESIGNATION

Please take notice that the undersigned counsel hereby appears as counsel for Intervenor
NICOLE GUERRIERO, in this action. The undersigned counsel, hereby designates its primary
and secondary e-mail service addresses pursuant to Rule 2.516, as follows:

Primary email: dundun2124@gmail.com
Secondary email: cdunner2@aol.com

I HEREBY CERTIFY that a true and correct copy hereof has been furnished by e-service
to Nellie King, Esq., Joseph Sconzo, Esq., Lawonda Warren, Esq., on this 1st day of October,
2019.

By: /s/ Colleen M. Dunne
Colleen M. Dunne, Esq.
Fla. Bar No. 0451843
1220 2nd Street
Key West, FL 33040
305-360-0656
dundun2124@gmail.com

EXHIBIT A

RETURN OF SERVICE

State of Florida

County of PALM BEACH

Circuit Court

Case Number: 2019CA011150XXXXMB Court Date: 10/2/2019 2:00 pm

Plaintiff:

NELLIE L. KING, THE LAW OFFICES OF NELLIE L. KING, P.A.

vs.

Defendant:

CITY OF DELRAY BEACH, FLORIDA

For:

NELLIE L. KING, P.A.

319 CLEMATIS STREET, SUITE 107

WEST PALM BEACH, FL 33401

Received by Anderson Process Service, Inc. on the 20th day of September, 2019 at 1:29 pm to be served on **ASSISTANT STATE ATTORNEY COLLEEN DUNNE, STATE ATTORNEY'S OFFICE, 530 WHITEHEAD STREET, SUITE 301, KEY WEST, FL 33040.**

I, Gus Merkle, do hereby affirm that on the **24th day of September, 2019 at 8:45 am, I:**

INDIVIDUALLY/PERSONALLY served by delivering a true copy of the **SUBPOENA FOR HEARING** with the date and hour of service endorsed thereon by me, to: **ASSISTANT STATE ATTORNEY COLLEEN DUNNE** at the address of: **STATE ATTORNEY'S OFFICE, 530 WHITEHEAD STREET, SUITE 301, KEY WEST, FL 33040**, and informed said person of the contents therein, in compliance with state statutes.

I certify that I am over the age of 18, have no interest in the above action, and am a MCSO appointed Special Process Server, in good standing, in the 16th Judicial Circuit in which the process was served. Under penalty of perjury, I do declare that I have read the foregoing document and declare the facts stated are true. Notary not required pursuant to FS 92.525(2).



Gus Merkle
MCSO #338

Anderson Process Service, Inc.
55 Boca Chica Road
#117
Key West, FL 33040
(305) 304-1894

Our Job Serial Number: PAN-2019001319

EXHIBIT B

9.27.19 - 10:35 AM - Not an Mday

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

NELLIE L. KING, THE LAW OFFICES
OF NELLIE L. KING, P.A.
Plaintiff,

CASE NO.: 2019CA011150XXXXMB
CIRCUIT CIVIL DIV.: AA
DELRAY P.D. #17-014767

v.

CITY OF DELRAY BEACH, FLORIDA,
Defendant.

SUBPOENA FOR HEARING

TO: Assistant State Attorney Colleen Dunne
State Attorney's Office
530 Whitehead Street, Suite 301
Key West, FL 33040

Date 9.24.19 Time 8:45AM

Server Gus Merkley
GUS MERKLEY **NCBO # 338**
In good standing in the 16th Judicial Circuit,
Monroe County, Florida

W/F, 38yo, 5'7", 140, BBA

YOU ARE COMMANDED to appear in court for hearing.

PLACE: Before the Honorable Judge G. Joseph Curley in Courtroom 10H
Daniel T.K. Hurley Courthouse, 205 N. Dixie Hwy, West Palm Beach, FL 33401

DATE/TIME: Wednesday, October 2, 2019 at 2:00 p.m., AND THIS SUBPOENA
IS TO REMAIN BINDING UNTIL HEARING IS CONCLUDED

If you fail to appear, you may be in contempt of Court. You are subpoenaed to appear by the undersigned attorney and, unless excused from this subpoena by the undersigned attorney or the Court, you shall respond to this subpoena as directed.

LAW OFFICES OF NELLIE L. KING, P.A.
319 Clematis Street, Suite 107
West Palm Beach, FL 33401
Tele.: (561)833-1084

BY:

Nellie L. King
NELLIE L. KING, ESQUIRE
Florida Bar No.: 0099562

"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Tammy Anton, Americans with Disabilities Act Coordinator, Palm Beach County Courthouse, 205 North Dixie Highway West Palm Beach, Florida 33401; telephone number (561) 355-4380 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711."

1319

MEMBER PROFILE

Colleen Marie Dunne

Member in Good Standing

Eligible to Practice Law in Florida

Bar Number:

451843

Mail Address:

State Attorney's Office
530 Whitehead St Ste 301
Key West, FL 33040-7098
United States

Office: **305-292-3400**

Cell: **305-292-3400** - No Text Messages

Fax: 305-294-7707

Email:

cdunne@keyssao.org

Personal Bar URL:

<https://www.floridabar.org/mybarprofile/451843>

vCard:

EXHIBIT C



County:

Monroe

Circuit:

16

Admitted:

12/21/2000

10-Year Discipline History:

None

Practice Areas:

Criminal

State Courts:

Massachusetts

Firm Size:

1

Firm Position:

Government attorney

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